IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 28425 of 2007(H)

AGAINST THE ORDER IN EA 109/05 IN EP 21/04 IN ARC.1205/2001 of SUB COURT, SULTHAN BATHERY
.....

PETITIONER: 1ST J.D.IN EP 21/2004 IN ARC 1205/2001

M.P.MARIYAMMA, AGED 53 YEARS,
D/O.CHACKO, PADIYARA HOUSE, PAYYAMPALLY VILLAGE,
KOILERY PO, MANANTHAVADY, WAYANAD DISTRICT.

BY ADV. SRI.P.K.JOSE

RESPONDENTS: D.H. IN EP 21/2004 IN ARC 1205/2001

THE MANANTHAVADY TALUK HOUSING
CO-OPERATIVE SOCIETY LTD.NO.C-411,
MANANTHAVADY P.O., WAYANAD DISTRICT REP.BY ITS SECRETARY.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 28425 OF 2007

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Dated this the 25th day of September, 2007.

J U D G M E N T

This writ petition is filed challenging the order passed by the learned Sub Judge, Sulthan Bathery on 16.8.07. As per the order the Court fixed the upset price of the property at Rs.2 lakhs and directed the property to be sold on 28.9.07. The learned counsel for the writ petitioner submits before me two points. The first point is to the effect that he had filed Ext.P2 application wherein it is stated that only a portion of the property having an extent of 1 acre 20 cents need to be sold and that the property will fetch a value of Rs.10 lakhs. Her grievance is, that has not been considered by the Court below. It is admitted that it is a mortgage decree. There is no direction in the mortgage decree to sell a portion of the mortgage property. When it is so this Court in the decision reported in **Dhanalakshmi Bank Ltd. v. Divakaran (2000(2) KLT 231**) held that an executing

Court cannot go behind the direction in the decree and to alter either the mode of sale ordered or to consider whether anything less than what is directed by the decree to be sold, need alone be sold. So the first contention that only 1 acre and 20 cents of property need to be sold cannot be entertained.

2. So far as the second point is concerned there is recital in the petition that the property will fetch an amount Rs.10 lakhs. But, in the order dated 16.8.07 the Court below has recorded that the upset price suggested by the decree holder is Rs.2 lakhs and it is not objected by the judgment debtor. The learned counsel would submit that such a statement has not been made. Now, it is a well settled position that in such circumstances the appropriate remedy for the party is to move the very same Court and contend for the position that such a contention has not been made. So, in order to enable the party to move the Court with such a prayer I direct the Court below to defer the sale by one

month from 28/9/07 and on receipt of an application by the writ petitioner to dispose it of in accordance with law after hearing both sides.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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